

§ 1.468A-1

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§ 1.468A-7 Manner of and time for making election.

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§ 1.468A-1 Nuclear decommissioning costs; general rules.

- (a) *Introduction.* Section 468A provides an elective method for taking into account nuclear decommissioning

costs for Federal income tax purposes. In general, an eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A-7 is allowed a deduction (as determined under § 1.468A-2) for the taxable year in which the taxpayer makes a cash payment to a nuclear decommissioning fund. Taxpayers using an accrual method of accounting that do not elect the application of section 468A are not allowed a deduction for nuclear decommissioning costs prior to the taxable year in which economic performance occurs with respect to such costs (see section 461(h)).

(b) *Definitions.* The following terms are defined for purposes of section 468A and the regulations thereunder:

(1) The term *eligible taxpayer* means any taxpayer that possesses a qualifying interest in a nuclear power plant (including a nuclear power plant that is under construction).

(2) The term *qualifying interest* means—

(i) A direct ownership interest; and

(ii) A leasehold interest in any portion of a nuclear power plant if—

(A) The holder of the leasehold interest is subject to the jurisdiction of a public utility commission with respect to such portion of the nuclear power plant;

(B) The holder of the leasehold interest is primarily liable under Federal or State law for decommissioning such portion of the nuclear power plant; and

(C) No other person establishes a nuclear decommissioning fund with respect to such portion of the nuclear power plant.

A direct ownership interest includes an interest held as a tenant in common or joint tenant, but does not include stock in a corporation that owns a nuclear power plant or an interest in a partnership that owns a nuclear power plant. Thus, in the case of a partnership that owns a nuclear power plant, the election under section 468A must be made by the partnership and not by the partners. In the case of an unincorporated organization described in § 1.761-2(a)(3) that elects under section 761(a) to be excluded from the application of subchapter K, each taxpayer that is a co-owner of the nuclear power

plant is eligible to make a separate election under section 468A.

(3) The terms *nuclear decommissioning fund* and *qualified nuclear decommissioning fund* mean a fund that satisfies the requirements of § 1.468A-5. The term *nonqualified decommissioning fund* means a fund that does not satisfy those requirements.

(4) The term *nuclear power plant* means any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy, if the rates for the furnishing or sale, as the case may be, either have been established or approved by a public utility commission or are under the jurisdiction of the Rural Electrification Administration. Each unit (i.e., nuclear reactor) located on a multi-unit site is a separate nuclear power plant. The term *nuclear power plant* also includes the portion of the common facilities of a multi-unit site allocable to a unit on that site.

(5) The term *nuclear decommissioning costs* or *decommissioning costs* means all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant that has permanently ceased the production of electric energy. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425). An expense is otherwise deductible for purposes of this paragraph (b)(5) if it would be deductible under chapter 1 of the Internal Revenue Code without regard to section 280B.

(6) The term *public utility commission* means any State or political subdivision thereof, any agency, instrumentality or judicial body of the United